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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,551	10/24/2000	Roe Peterson	1009-04-01	2563
22884	7590	04/21/2005	EXAMINER	
MIDDLETON & REUTLINGER 2500 BROWN & WILLIAMSON TOWER LOUISVILLE, KY 40202			KYLE, CHARLES R	
			ART UNIT	PAPER NUMBER

3624

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/695,551

Applicant(s)

PETERSON, ROE

Examiner

Charles R Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 14-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Objection of the prior office action to Claim 1 is withdrawn based on Applicant's amendment.

Claim Rejections - 35 USC § 112

Rejections of the prior office action under the second paragraph of 35 U.S.C. 112 of Claims 1-14 are withdrawn based on Applicant's amendment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 9-11, 14-21, 23-24 and 26 are rejected under 35 U.S.C. 103(a) as being obvious over by US 2002/0023038 *Fritsch et al* in view of US 6,813,612 *Rabenold et al*.

As to Claim 1, *Fritsch* discloses the invention substantially as claimed, including in a method of conducting an online auction (Para. 3), the steps of:

- a) providing an auction web site system (Para. 20)
including a merchandise database (Para. 26, lines

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10-12) of information pertaining to auction lots to be sold (Para.14);

- b) with respect to an auction lot, using said web site system to conduct an auction in the following steps:
 - i) assigning an opening auction price (Para. 16, line 1) and at least one predetermined bid increment (Para. 16, lines 3-6) to said auction;
 - ii) displaying to a bidder the current auction price of said lot (Fig. 5, ele. 370) as well as said predetermined bid increments (Fig. 5, eles. 390 and 370; predetermined bid increment = Make this bid (\$45.00) - Current Bid (\$44.00) = \$1.00)

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- iii) inducing bidders to place bids by selecting from said predetermined bid increments, the amount of a bid being the current auction price plus the selected predetermined bid increment (Fig. 5, ele. 390), details of said bids being transmitted to and recorded in said web site system (Paras. 20-29);
- iv) upon occurrence of a revision event (Par. 16, lines 16-22), revising said predetermined bid increments and refreshing the display of said revised predetermined bid increments to bidders (Figs. 5 and 6, change in increment from \$1.00 to \$0.25);
- v) upon occurrence of an auction-closing event, accepting no further bids and determining the winning bidder based on bids having been stored in said Web site system (Fig. 12; Para. 38).

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Fritsch does not specifically disclose the newly claimed feature of a plurality of predetermined bid increments from which an increment is selected thereby simultaneously transmitting details of a bid to a website system and recording the bid in the system. *Rabenold et al* discloses this limitation at Figs. 13B and 16, and Col. 13, lines 19-40, at least. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Fritsch* with the plural updating bid increments of *Rabenold* because this would provide a rapid means for a bidder to indicate and transmit a competitive bid to an auction system.

With respect to Claim 2, *Fritsch* discloses that a highest bid wins at Background of the Invention.

With respect to Claim 3, *Fritsch* discloses that a revision event comprises a manual trigger initiated by a site operator at Para. 16, lines 17-18.

As to Claim 4, *Fritsch* discloses a revision event as a preprogrammed condition at Para. 16.

With respect to Claim 7, *Fritsch* discloses auction closing based on a preprogrammed condition (equality of bid and offer) at Fig. 12 and Para. 16, lines 12-14.

Concerning Claim 9, *Fritsch* discloses manual revision of increments at Para. 16, lines 17-18.

As to Claim 10, *Fritsch* discloses recalculation of bid increments at Para. 16, lines 19-20.

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Concerning Claim 11, *Fritsch* discloses lowering bid increments at Para. 16.

As to Claim 14, *Fritsch* discloses a bidder browser for auction information at Para. 21.

Concerning Claim 15, it is a system form of Claim 1 and is rejected in a like manner. *Fritsch* further discloses a web based auction system connected to bidders at Fig. 2, a bid management system containing bid details at Paras. 12 and 26 and an increment setting system at Paras. 15-16.

As to Claim 16, *Fritsch* discloses a bidder communicating with the web system from a bidder computer at Fig. 2 and Paras. 26 and 27.

Concerning Claim 17, see the discussion of Claims 15 and 14.

Concerning Claim 18, see the discussion of Claims 15 and 9.

Concerning Claim 19, see the discussion of Claims 15 and 10.

With respect to Claim 20, see the discussions of Claims 15 and 6.

Concerning Claim 21, see the discussion of Claims 15 and 7.

Concerning Claim 23, see the discussion of Claims 15 and 3.

Concerning Claim 24, see the discussion of Claims 15 and 4.

As to Claim 26, *Fritsch* discloses a medium for storing a computer program operative to perform the method at Paras. 19-30.

Claims 5-6, 8, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0023038 *Fritsch et al* in view of US 6,813,612 *Rabenold et al* and further in view of US 6,230,147 *Alaia et al*.

As to Claim 5, *Fritsch* discloses the invention substantially as claimed. See the discussion of Claim 4. *Fritsch* does not specifically disclose consideration of time in adjusting bid increments. *Alaia* discloses consideration of time in a bidding process. See *Alaia* at Col. 6, line 62 to col. 7, line 30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify *Fritsch* with consideration of timing as disclosed by *Alaia* to modify bid increments because this would allow auctioneers to improve bid prices by using gradually smaller, more palatable price increases. See particularly *Alaia* at Col. 6, lines 62-67.

As to Claim 6, *Fritsch* discloses the invention substantially as claimed. See the discussion of Claim 1. *Fritsch* does not specifically disclose manually closing an auction. *Alaia* discloses this limitation at Col. 9, lines 25-41. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify *Fritsch* with manual auction as disclosed by *Alaia* because this would allow auctioneers more control over the auction process.

As to Claim 8, *Fritsch* discloses the invention substantially as claimed. See the discussion of Claim 7. *Fritsch* does not disclose the consideration of bid timing in closing an auction. *Alaia* discloses this limitation at Col. 5, line 47 to col. 8, line 55, particularly Col. 6, line 62 to col. 7, line 11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify *Fritsch* with the closing based on bid timing of *Alaia* because this would achieve a better auction price by varying closing times.

With respect to Claim 22, see the discussion of claims 21 and 8.

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With respect to Claim 25, see the discussion of claims 24 and 5.

Response to Arguments

Applicant's arguments filed December 20, 2004 have been fully considered but they are not persuasive.

At page 9 of Remarks, Applicant begins substantive argument at para. 5 by commenting that the provisional application should be the basis for the rejection rather than the published application. This is incorrect. The Examiner has consulted with his Supervisor, who states that the grounds of rejection presented are correct.

Applicant in the next paragraph discusses elements of the provisional application, which also appear in the published application. Applicant fails to identify *any* element in the published application absent from the provisional, except for the newly claimed element of selection of a bid increment from among plural increments and simultaneous transmission of a bid upon the selection. This newly claimed feature is disclosed by *Rabenold et al*, which is applied in combination with *Fritsch* in the rejections set forth above. At page 15, Applicant continues argument that *Fritsch* does not show the newly limitation; this argument is moot in view of the new grounds of rejection.

Applicant argues at page 10-11 against the combination of *Fritsch* and *Alaia*. Applicant argues that *Fritsch* contains no suggestion to improve bidding prices by using gradually smaller more palatable price increases. In response to this argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

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combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would be obvious to try to draw out additional increments of auction revenue by offering a bidder an opportunity to win the auction at the last moment by placing a bid costing her "just a little more". Applicant has given no refutation of this reasoning; the rejection stands.

At page 11, second paragraph, Applicant argues an unclear difference between the timing of *Alaia* and a bid-timing element of the invention. Applicant does not relate this to any particular limitation of the Claim language.

At page 11, para. 3, Applicant repeats argument that the references do not contain suggestion to combine the references. See preceding discussion.

The rejections are maintained.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on M-F 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk
April 15, 2005

Examiner Charles Kyle

A handwritten signature in black ink that reads "Charles Kyle". The signature is written in a cursive style with a large, stylized "C" and "K".